REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 2-5, and 8-31 are currently pending. Claim 31 is hereby canceled. Claims 8, 17, 23, and 31 are independent. No new matter has been introduced. Support for this amendment is provided throughout the Specification as originally filed.

Changes to the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. REJECTIONS UNDER 35 U.S.C. §103

Claims 8, 3, 4, 9-13, 15-17, 19, and 21-30 were rejected under 35 U.S.C. §103 as allegedly unpatentable over U.S. Patent No. 7,013,477 to Nakamura et al. (hereinafter, merely "Nakamura") in view of U.S. Patent No. 6,973,669 to Daniels in view of U.S. Patent No. 6,285,818 to Suito et al. (hereinafter, merely "Suito") and further in view of U.S. Patent No. 6,282,713 to Kitsukawa et al. (hereinafter, merely "Kitsukawa");

Claims 2 and 18 were rejected under 35 U.S.C. §103 as allegedly unpatentable over Nakamura, Daniels, Suito, Kitsukawa and further in view of U.S. Patent Application Publication No. 2002/0019769 of Barritz et al. (hereinafter, merely "Barritz");

Claims 5, 14, 20, and 28 were rejected under 35 U.S.C. §103 as allegedly unpatentable over Nakamura, Daniels, Suito, Kitsukawa and further in view of U.S. Patent Application Publication No. 2003/0192060 of Levy; and

Claim 31 was rejected under 35 U.S.C. §103 as allegedly unpatentable over Nakamura in view of U.S. Patent No. 6,574,424 to Dimitri et al. (hereinafter, merely "Dimitri") .

Applicants respectfully traverse these rejections.

1) The rejection of claim 31 is moot because that claim has been canceled.

2) Remaining claims 2-5 and 8-30 were all rejected under 35 U.S.C. 103(a) over Kitsukawa in combination with other reference. As discussed below, Kitsukawa is ineligible as a prior art reference to the present application.

While the applicants disagree with the merits of the rejection of claims 2-5 and 8-30, this argument is moot because Kitsukawa is ineligible as prior art against the Applicant's claims under 35 U.S.C. 103(c), which states:

> (c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. (emphasis added)

Under 35 U.S.C. 103(c), an applicant's admission that subject matter was developed prior to applicant's invention would not make the subject matter prior art to applicant if the subject matter qualifies as prior art only under sections 35 U.S.C. 102(e), (f), or (g), and if the subject matter and the claimed invention were commonly owned at the time the invention was made. *See* MPEP 706.02(l)(2), section I.

Under 35 U.S.C. 103(c), Kitsukawa qualifies only as prior art under 35 U.S.C. 102(e) but not under 102(a) or 102(b):

- Kitsukawa is 102(e) prior art because the Kitsukawa U.S. filing date of December 21, 1998 is earlier than the present application's foreign priority date of February 23, 2001.
- Kitsukawa is not 102(b) prior art because the Kitsukawa publication date of August 28, 2001 is **not** more than 1 year before the present application's effective U.S. filing date of February 21, 2002.
- Kitsukawa is not 102(a) prior art because the Kitsukawa publication date of August 28, 2001 is **after** the present application's foreign priority date of February 23, 2001.

To overcome the rejection based upon Kitsukawa, Applicant submits herewith a verified English translation of priority Japanese application 2001-048058, filed in Japan on February 23, 2001. In the original Inventors' Declaration, Applicant asserted a claim of priority to this Japanese application. It is readily apparent that claims 2-5 and 8-30 find support in the priority application.

Thus, Kitsukawa only qualifies as prior art under 35 U.S.C. 102(e). Thus, under 35 U.S.C. 103(c), the Kitsukawa reference will not preclude patentability of the present application

if Kitsukawa and the present application were commonly owned. The standard for what constitutes a proper statement of common ownership is described in MPEP 706.02(l)(2), section II.[1] As such, the applicants' representative states that:

STATEMENT OF COMMON OWNERSHIP

U.S. Application Serial No. 09/218,857 (Now U.S. Patent No. 6,282,713) of Kitsukawa et al. was, at the time the invention of U.S. Application Serial No. 10/081,973 of Shigetomi et al. was made, commonly owned by SONY Corporation. (See Assignments: Reel/Frame: 009879/0874 for Kitsukawa et al. and 013018/0530 for Shigetomi et al.)

Accordingly, Applicant submits that the Kitsukawa is disqualified as prior art in a rejection under 35 U.S.C. 103(c). Therefore, Kitsukawa must be removed from consideration for the rejection of claims 2-5 and 8-30. Claims 2-5 and 8-30 were rejected only over Kitsukawa in combination with other references. Therefore, these rejections must be withdrawn.

---

[1] "The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) in order to ensure that the examiner quickly notices the statement. Applicants may, **but are not required to**, submit further evidence, such as assignment records, affidavits or declarations by the common owner, or court decisions, *in addition to* the above-mentioned statement concerning common ownership.

For example, an attorney or agent of record receives an Office action for Application X in which all the claims are rejected under 35 U.S.C. 103(a) using Patent A in view of Patent B wherein Patent A is only available as prior art under 35 U.S.C. 102(e), (f), and/or (g). In her response to the Office action, the attorney or agent of record for Application X states, in a clear and conspicuous manner, that:

"Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z."

This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) **against the claims of Application X."**

In view of above statements, withdrawal of the rejection of claims 2-5 and 8-30 under 35 U.S.C. §103 is respectfully requested.

CONCLUSION

Claims 2-5, and 8-31 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: _____

Paul A. Levy
Reg. No. 45,748
(212) 588-0800